

Manufactured product means an item produced as a result of the manufacturing process.

Manufacturing process means the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.

Negotiated procurement means a contract awarded using other than sealed bidding procedures.

Rolling stock means transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services.

System means a machine, product, or device, or a combination of such equipment, consisting of individual components, whether separate or interconnected by piping, transmission devices, electrical cables or circuitry, or by other devices, which are intended to contribute together to a clearly defined function. Factors to consider in determining whether a system constitutes an end product include: Whether performance warranties apply to an integrated system (regardless of whether components are separately warranted); whether products perform on an integrated basis with other products in a system, or are operated independently of associated products in the system; or whether transit agencies routinely procure a product separately (other than as replacement or spare parts).

United States means the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

APPENDIX A TO § 661.3—END PRODUCTS

The following is a list of representative end products that are subject to the requirements of Buy America. This list is representative, not exhaustive.

(1) *Rolling stock end products*: All individual items identified as rolling stock in § 661.3 (e.g., buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, as well as vehicles used for support services); train con-

trol, communication, and traction power equipment that meets the definition of end product at § 661.3 (e.g., a communication or traction power system, including manufactured bimetallic power rail).

(2) *Steel and iron end products*: Items made primarily of steel or iron such as structures, bridges, and track work, including running rail, contact rail, and turnouts.

(3) *Manufactured end products*: Infrastructure projects not made primarily of steel or iron, including structures (terminals, depots, garages, and bus shelters), ties and ballast; contact rail not made primarily of steel or iron; fare collection systems; computers; information systems; security systems; data processing systems; and mobile lifts, hoists, and elevators.

[72 FR 53696, Sept. 20, 2007, as amended at 74 FR 30239, June 25, 2009]

§ 661.5 General requirements.

(a) Except as provided in § 661.7 and § 661.11 of this part, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.

(b) All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.

(c) The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.

(d) For a manufactured product to be considered produced in the United States:

(1) All of the manufacturing processes for the product must take place in the United States; and

(2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is

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manufactured in the United States, regardless of the origin of its subcomponents.

[61 FR 6302, Feb. 16, 1996, as amended at 74 FR 30239, June 25, 2009]

§ 661.6 Certification requirements for procurement of steel or manufactured products.

If steel, iron, or manufactured products (as defined in §§ 661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in § 661.13(b) of this part.

Certificate of Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Date _____
Signature _____
Company _____
Name _____
Title _____

Certificate of Non-Compliance with Buy America Requirements

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 CFR 661.7.

Date _____
Signature _____
Company _____
Name _____
Title _____

[71 FR 14117, Mar. 21, 2006, as amended at 72 FR 53696, Sept. 20, 2007]

§ 661.7 Waivers.

(a) Section 5323(j)(2) of Title 49 United States Code provides that the general requirements of 49 U.S.C. 5323(j)(1) shall not apply in four specific instances. This section sets out the conditions for the three statutory waivers based on public interest, non-availability, and price-differential. Section 661.11 of this part sets out the conditions for the fourth statutory waiver governing the procurement of

rolling stock and associated equipment.

(b) Under the provision of 49 U.S.C. 5323(j)(2)(A), the Administrator may waive the general requirements of 49 U.S.C. 5323(j)(1) if the Administrator finds that their application would be inconsistent with the public interest. In determining whether the conditions exist to grant this public interest waiver, the Administrator will consider all appropriate factors on a case-by-case basis, unless a general exception is specifically set out in this part. When granting a public interest waiver, the Administrator shall issue a detailed written statement justifying why the waiver is in the public interest. The Administrator shall publish this justification in the FEDERAL REGISTER, providing the public with a reasonable time for notice and comment of not more than seven calendar days.

(c) Under the provision of 49 U.S.C. 5323(j)(2), the Administrator may waive the general requirements of 49 U.S.C. 5323(j) if the Administrator finds that the materials for which a waiver is requested are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

(1) It will be presumed that the conditions exist to grant this non-availability waiver if no responsive and responsible bid is received offering an item produced in the United States.

(2) In the case of a sole source procurement, the Administrator will grant this non-availability waiver only if the grantee provides sufficient information which indicates that the item to be procured is only available from a single source or that the item to be procured is not produced in sufficient and reasonably available quantities of a satisfactory quality in the United States.

(3) After contract award, the Administrator may grant a non-availability waiver under this paragraph, in any case in which a bidder or offeror originally certified compliance with the Buy America requirements in good faith, but can no longer comply with its certification. The Administrator will grant a non-availability waiver only if the grantee provides sufficient evidence that the original certification was made in good faith and that the